IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 97 of 2005

For Approval and Signature:

HON'BLE MR. JUSTICE M.D. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJKUMAR ADITYAPRASAD PATHAK

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 97 of 2005

MR NISHITH P THAKKAR for Petitioner.

MR VIREN G DAVE for applicant.

Ms.P.B.Sheth, A.P.P for Respondent No. 1

Mr.K.B.Naik for Respondent No. 2

CORAM : HON'BLE MR. JUSTICE M.D. SHAH

Date of decision: 15/04/2005

ORAL JUDGEMENT

1. Heard learned Advocates Mr.Nishit P.Thakkar and Mr. Viren G. Dave for the applicant, Ms.P.B.Sheth, learned A.P.P. for the respondent no.1 and Mr. K.B.Naik for the respondent no.2.

2. Rule. Ms. P.B.Sheth, learned A.P.P. waives service of rule on behalf the respondent-State. With the consent of the learned Advocates appearing for the parties, the matter is taken up for final hearing and disposal today.

3. This Criminal Revision Application challenges the legality and validity of the order dated 15-12-2004 passed by the learned Additional Sessions Judge, 8th Fast Track Judge, District Kheda at Nadiad, in Criminal Revision Application no.165/2004, in so far as imposition of condition no.2 with regard to furnishing of bank guarantee is concerned.

4. Short facts of the present case are that the applicant-firm is a transporter and commission agent running business in the name and style of Maa Saraswati Road Carriers. It is alleged by the applicant that Nirma Consumers Care Limited and Nirma Marketing Enterprises had entrusted the job of transportation of 2636 boxes containing bath soaps and detergent soaps and while these goods were being transported on 19-4-2004 through truck no.GJ-2--T-3922, the same were looted by unidentified persons at village Mahudha. However, the said truck was subsequently traced out at Vadodara City. In this connection an FIR was lodged by the truck driver on 15-9-2004 which was registered at Mahudha Police Station vide FIR I 116/2004. Pursuant to the said FIR the investigating officer concerned took over the custody of the Muddamal on 19-9-2004. On receiving this information, the applicant who is the transporter and commission agent of Nirma Consumer Care Limited and Nirma Marketing Enterprises at the insistence by these Companies to file an application, preferred Misc. Application on 20-9-2004 before the learned Judicial Magistrate, First Class, Nadiad. who by his order dated 13-10-2004 directed to handover the muddamal goods to the applicant. However, being aggrieved by the condition imposed therein with regard to furnishing solvent surety of Rs.20,00,000/-, the applicant again preferred Criminal Revision Application no.165 of 2004 before the learned Additional Sessions Judge, District Kheda, and the learned Additional Sessions Judge by his order dated 15-12-2004 while altering the condition imposed in the said order passed by the learned Judicial Magistrate, First Class, Nadiad, imposed the condition to the effect that the applicant shall furnish bond and bank guarantee worth Rs.20,00,000/-which is the subject matter of challenge in the present Criminal Revision Application.

5. Mr.Nishit P.Thakkar and Mr. Viren G. Dave, leaned Advocates appearing for the petitioner has vehemently argued that the condition imposed by the learned Additional Sessions Judge is too harsh inasmuch as the applicant is running a very small business of transportation and commission agent and that he is also not the owner of the goods. According to the learned Advocates as per various pronouncements of the Honourable Apex Court, the release of Muddamal goods can be ordered on imposing condition as to furnishing of personal bond to the satisfaction of the Court. The learned Advocates, therefore, prayed that the Mudammal goods be released on imposition of such a condition.

6. As against this, the learned A.P.P. has submitted that the condition imposed by the learned Additional Sessions Judge is perfectly justified which does not call for interference by this Court in Revision.

7. I have gone through the entire record of the case. Having considered the submissions made by the learned Counsel of both sides, I am of the opinion that a lenient view in imposition of the condition for release of the Muddamal goods in question is warranted in the facts of the case on hand in order to serve the ends of justice. Accordingly, the application is partly allowed. The order dated 13-10-2004 passed by the learned Judicial Magistrate, First Class, Nadiad, in Misc.Application dated 20-9-2004 modified in Revision by the order dated 15-12-2004 passed by the learned Additional Sessions Judge, District Kheda, in Criminal Revision Application no.165/2004 is further modified to the extent that in place of the condition to furnish bond and bank guarantee to the tune of Rs.20,00,000/-, the applicant shall now furnish personal bond in the sum of Rs.20,00,000/-. The rest of the conditions imposed by the learned Additional Sessions Judge shall remain intact. Rule is made absolute to the aforesaid extent.

(M.D.Shah,J.)
stanley-mds.